IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 19249 of 1994

Between:

G.Gobriya, S/o. Balu,

R/o. H. No. 7-7-61, Bhoktapurlocality,

Abutting Ganj Road, Adilabad.

..... PETITIONER

AND

1 Sadalwar Raja Reddy (Died), S/o. Narayana,
Palsi Village, Kinwat Taluk, Nanded District,
Maharashtra State.
2 Special Tribunal under A.P. Land Grabbing (Prohibition) Act -

cum- District Judge, Adilabad.
3 Special Court under A.P.Land Grabbing (Prohibition) Act,
B.R.K.Bhavan, Tank Bund Road, Hyderabad.
4 Smt. Asha Bai, W/o. Late Sadalwar Raja Reddy,
R/o. Palsi (V) Kinwat Tq., Nanded Distrcit., Maharashtra State.
5 P.Vijaya, W/o. P.Mohan,
R/o. Palsi (V), Kinwat Tq., Nanded District, Maharashtra State.
(Respondents 4 and 5 are brought on record as LR's of the

deceased R1, as per Court Order dt.8-6-99 in WPMP 9559/98)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to call for the records and issue a Writ, order or direction particularly one in the nature of Writ of Certiorari by quashing the order dated 02/09/1994 in L.G.A. No. 9/94 on the file of Special Court under A.P. Land Grabbing (Prohibition) Act, B.R.K.Bhavan,

Tank Bund Road, Hyderabad and restoring the order dated 28/12/1993 in L.G.O.P.No. 2/88 on the file of Special Tribunal under A.P.Land Grabbing (Prohibition) Act-cum-District Judge at Adilabad.

For the Petitioner: Mr. N.V. Suryanarayana Murthy, Senior Advocate for Mr. VINOD KUMAR DESHPANDE, Advocate.

For Respondent No. 1: MR.NAZEER KHAN, Advocate

For the Respondent Nos. 2 to 5: None appeared.

The Court made the following Order: (per Sri B. Sudershan Reddy, J)

The petitioner in the instant writ petition invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of Certiorari to call for the records in L.G.A No. 9 of 1994 on the file of the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') and quash the same.

In order to consider as to whether the impugned judgment of the Special Court suffers from any errors apparent on the face of the record requiring our interference in exercise of our Certiorari jurisdiction, it is just and necessary to notice a few relevant facts leading to the filing of this writ petition.

The 1st respondent herein filed L.G. O.P No. 2 of 1988 on the file of the Special Tribunal, Adilabad against the petitioner herein purporting it to be under Section 8 of the Act alleging that the Adilabad Municipality is the owner of the petition schedule site, he has constructed the super structure thereon and inducted the writ petitioner herein into possession of the same under a Nowkarnama marked as Ex. A-1 dated 4.7.1977. According to the averments made in the petition, the petitioner herein is alleged to have agreed to vacate the schedule property as and when called upon to do so but failed to vacate the same in spite of repeated requests and even after Ex. A-5 lawyer's notice dated 17.10.1987.

The petitioner herein filed a detailed counter inter alia contending that he

constructed the superstructure with his own money and not the 1st respondent. He denied to have executed
Ex. A-1 and set up title in himself to the superstructure in the schedule property.

The Special Tribunal upon consideration of the material available on record found that Ex. A-1 is not a true and genuine document and accordingly held that the 1st respondent herein did not make out any case to order redelivery of the possession of the schedule property as prayed for by him. Aggrieved by the same, the 1st respondent herein preferred L.G.A No. 9 of 1994 on the file of the Special Court. The Special Court upon re-appreciation of the evidence and the material available on record reversed the order passed by the Special Tribunal and accordingly held the 1st respondent to be the owner of the superstructure in the schedule property and the petitioner herein to be a land grabber within the meaning of Section 2 (d) (e) of the Act. The Special Court redirected the petitioner herein to vacate the schedule property.

In this writ petition, Sri N.V. Suryanarayana Murthy, learned senior counsel appearing on behalf of the petitioner contended that the petition filed by the 1st respondent in the Special Tribunal purporting it to be under Section 8 of the Act is not maintainable in law. The provisions of the Act are not at all attracted. Even if the allegations and averments made in the petition attract the provisions of the Act, the petitioner cannot be characterised as a land grabber. There is no act of land grabbing as such by the petitioner.

Sri Nazir Khan, learned counsel for the 1st respondent inter alia submitted that the petitioner asserted his right, title and interest in the superstructure without any lawful entitlement. The petitioner herein was inducted into possession by the 1st respondent with option to evict him from the superstructure whenever it was required and convenient for the 1st respondent to do so. The constructions were actually made by the 1st respondent with his own money and the petitioner was inducted as a care taker to look after the property as is evident from Ex. A-1.

We have given our anxious consideration to the rival submissions made during the course of hearing of this writ petition.

It is very well settled and needs no restatement at our hands that it would be impermissible for this Court to re-appreciate the evidence and substitute the findings in the place of findings recorded by the Special Court. But this Court in exercise of its Certiorari jurisdiction is required to consider whether the impugned order suffers from any errors on the face of the record and whether the Special Court committed any error in applying the legal principles to the facts situation.

In STATE OF A.P v. P.V. HANUMANTHA RAO, the apex Court observed that this Court in exercise of its jurisdiction under Article 226 of the Constitution nor in supervisory jurisdiction under Article 227 will convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence. “But the High Court has power in writ jurisdiction to interfere where important evidence has been overlooked and the legal provisions involved are misinterpreted or misapplied (emphasis is of ours)”.

We shall bear this principle in mind in considering the validity of the order passed by the Special Court. It is a peculiar case where the parties are fighting in respect of a superstructure unauthorisedly constructed on the land admittedly owned by Adilabad Municipality. Both the parties agree that the land on which the superstructure is built absolutely belongs to the Adilabad Municipality. No evidence is produced on record that such superstructure has been raised by either of the parties under any valid permission granted by the Municipality.

The case of the 1st respondent (since deceased) examined as P.W 1 in the Special Tribunal is that he occupied a municipal site near the Gunj covered by the schedule property belonging to Adilabad Municipality, constructed a house therein with wooden walls and tiled roof and used the same as his office in connection with his cotton business. He is not a resident of Adilabad Town but comes from neighbouring Nanded District in the State of Maharashtra. It is his case that he engaged the services of the petitioner on payment of Rs.25/- per month to keep a watch over the schedule property and accordingly obtained Ex. A-1 Nowkarnama

dated 4.7.1977. Ex. A-1 is stated to have been executed by the petitioner herein wherein it is stated that he shall continue to reside in the property in question as a caretaker and shall vacate whenever the 1st respondent wanted him to vacate from the premises. The undertaking reads that he should continue to reside there as a caretaker. There is any amount of controversy as to the execution of Ex. A-1. The Special Tribunal found Ex. A-1 to be not a genuine document but the said finding has been reversed by the Special Court, which held the document to be a genuine one. We shall proceed as if Ex. A-1 is a genuine document.

The short question that falls for consideration is whether the petitioner herein is a land grabber within the meaning of Section 2(d) of the Act?

Section 2(d) of the Act reads as follows:

> *"land grabber"* means a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorized structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts; and also includes the successors in interest".

Section 2(e) defines land grabbing which is to the following effect:

> "*land grabbing"* means every activity of grabbing or any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorized structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation, of unauthorized structures; and the term "to grab land" shall be construed accordingly".

In KONDA LAKSHMANA BAPUJI v. GOVT. OF A.P, the Supreme Court while interpreting Section 2(d) and (e) noted the various meanings of the term "grab" since the same is not defined under the Act and observed:

> The meaning of the term "grab" in the *New International Webster's Comprehensive Dictionary of the English Language*, is given as follows:
>
> "To grab or seize forcibly or suddenly; to take possession of violently or dishonestly; to make a sudden grasp. See synonyms under grasp –
> (i) The act of grabbing, or that which is grabbed. (ii) A dishonest or unlawful taking possession or acquisition. (iii) An apparatus for grappling".
>
> In *Words and Phrases*, Permanent Edn., Vol. 18, the meaning of "grab" is noted as under:
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> "The word 'grab' means an act or practice of appropriating unscrupulously, as in politics. *Smith v. Pure Oil Co.* (128 SW 2d 931, 933, 278 Ky 430).
>
> The word 'grab' means a seizure or acquisition by violent or unscrupulous means. *Smith v. Pure Oil Co.* (128 SW 2d 931, 933, 278 Ky 430).
>
> The word 'grab' means to seize, grasp, or snatch forcibly or suddenly with the hand, hence to take possession of suddenly, violently, or dishonestly. *Smith v. Pure Oil Co.* (128 SW 2d 931, 933, 278 Ky 430).

The Supreme Court observed that what needs to be looked into whenever a controversy arises requiring resolution as to whether one is a land grabber, is whether the person has any lawful entitlement to the land in dispute and had come into possession of the land in dispute unauthorisedly.

Even according to the averments made in the petition and the finding recorded by the Special Court, the petitioner herein was inducted into possession by the 1st respondent himself under

Ex. A-1 Nowkarnama. It was a permissive possession, even according to the 1st respondent. It is unnecessary to go into the question as to whether that permissive possession became an illegal one since even if it became illegal possession, the provisions of the Act would not be attracted so as to characterise the petitioner to be

a land grabber. Every illegal possession or impermissible possession cannot be equated to that of land grabbing. In P.V. Hanumantha Rao's case (1 supra) it was observed that a mere doubt raised by the State on the title and possession of the occupant of a land does not make him "a land- grabber". Whenever the right of the occupant is questioned by the State, it is not enough for the occupant to show that he has a prima facie bona fide claim to the land occupied but a burden is cast on him to prove that he is in occupation or possession of the land under a lawful title. It is further observed that where the regular remedy provided by general law is ousted by special law, the provisions of the latter deserve to be construed strictly.

In Konda Lakshmana Bapuji's case (2 supra) and P.V. Hanumantha Rao's case (1 supra), it is held that initially burden always lies on the person seeking relief from the Special Court. It has to be prima facie proved that the land alleged to have been grabbed by the land grabber is owned by the person seeking relief. In the instant case, the land on which the structure is stated to have been built admittedly belonged to the Municipality. There is not even prima facie evidence of the 1st respondent being the owner of the structure. How he could have obtained ownership of the structure built on the land belonging to the Municipality is not explained. The Special Court was impressed by the fact that in comparison to the writ petitioner, the 1st respondent was a rich person and he had the resources at his command to build the superstructure and accordingly held the 1st respondent to be the owner of the superstructure.

A Division Bench of this Court in **Shalivahana Builders (P) Ltd. v. S.G. Co-op. Housing Society**, held that an act of land grabbing involves taking of any land belonging to Government, etc., or any other private person unauthorisedly, unfairly, greedily, either forcibly, violently, unscrupulously or otherwise but without any lawful entitlement. Taking possession of the land without any lawful entitlement thereto is the *sine qua non* to hold a person to be a land grabber. Unless a person unauthorisedly and without any lawful entitlement thereto enters or intrudes into the land forcibly or otherwise, he cannot be held to be a land grabber. The emphasis is of taking possession without any lawful entitlement.

The dispute between the petitioner and the 1st respondent in our considered opinion does not attract any of the ingredients of Sections 2 (d) and 2 (e) of the Act. The dispute is with regard to possession simplicitor. In the light of the very case set up by the 1st respondent that he himself inducted the petitioner into the possession of the superstructure built on the municipal land, the same is enough to hold that the petitioner did not forcibly enter into the possession of the land without any lawful entitlement. That apart, the very title of the 1st respondent with regard to the property in question itself is in doubt in view of the admitted fact that the superstructure alleged to have been built by him is situated in the municipal land.

It is evident that even after the publication of the notification by the Tribunal as is required under the provisions of the Act, Adilabad Municipality did not choose to present itself before the Special Tribunal asserting its right, title and interest in the property, in which event no relief to either of the parties before us could have been granted by the Special Tribunal.

In view of our order setting aside the findings recorded by the Special Court, it shall be open to Adilabad Municipality to proceed as against the parties and or any other person who is found in possession of the property in question, in which event the matter shall be considered on its own merits.

For the aforesaid reasons, we find it difficult to sustain the order passed by the Special Court. The same is accordingly set aside.

The Writ Petition is accordingly allowed without any order as to costs.

(B. Sudershan Reddy, J)

23..09..2004

(K.C. Bhanu, J)

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Rule nisi has been made absolute. Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the twenty third day of September, Two Thousand and Four.

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1 The Special Tribunal under A.P. Land Grabbing (Prohibition)

Act - cum- District Judge, Adilabad.

2 The Special Court under A.P.Land Grabbing (Prohibition) Act,
B.R.K.Bhavan, Tank Bund Road, Hyderabad.

3 Two CD copies.